IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8561 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LARSEN AND TOURBO LTD. - Petitioner(s)
Versus
INSPECTOR OF MOTOR VEHICLES - Respondent(s)

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Appearance :
MR BR GUPTA for Petitioner(s) : 1,
MR UR BHATT, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/04/2006

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

RULE. Service of rule is waived by learned AGP Shri

U.R. Bhatt for the respondent. Looking to the peculiar facts of the case and in view of the request of the learned advocates, the petition is finally heard today.

2. The short question involved in the petition is with regard to permitting the petitioner to take the equipment, which is known as TATA 320 Crane bearing Machine Sl. No. T-3640 and Asset Code No. 0230-023-0 out of the territory of Gujarat.

3. It is the case of the respondent that no vehicle tax has been paid in respect of the equipment in question and, therefore, the said equipment should not be permitted to be taken out of Gujarat till the tax in respect of the said equipment is paid.

4. On the other hand, the petitioner's case is that the equipment in question is not a motor vehicle and, therefore, it is not subject to any tax under the provisions of the Bombay Motor Vehicles Tax Act, 1958 (hereinafter referred to as 'the Act').

5. The equipment in question has been detained at Shamlaji Checkpost and is lying there for the last 12 days.

6. Looking to the facts of the case, we requested the learned AGP to calculate the amount of tax, which could have been levied on the equipment in question if the equipment in question is a “motor vehicle” within the meaning of the Act.

7. On the basis of a memo prepared when the equipment and a trailer carrying the equipment had been detained, it is found that approximate weight of the equipment is 29,300 Kgs. and on the basis of the said weight, tax in respect of the equipment in question, for the period during which the equipment remained in Gujarat, would be approximately Rs. 68,970/-. For the purpose of ascertaining the period during which the equipment was in Gujarat, the learned advocates have agreed to the fact that the equipment was brought in Gujarat somewhere in the first week of February, 2004 and it is likely to be taken out of Gujarat, in pursuance of this order, on 30th April, 2006. That is why tax in respect of the said equipment has been calculated on the basis that the equipment was brought in Gujarat on 1st February, 2004 and left the territory of Gujarat on 30th April, 2006. The aforesaid figures have been given by the learned AGP in pursuance of instructions received by him from the

officers, who are present in the court.

8. Thus, at the most, if the equipment in question is treated as a vehicle, the aforesaid amount of tax would be payable by the petitioner upon regular assessment. In view of the above fact, we direct the petitioner to pay the aforesaid amount to the respondent and within 2 days from the receipt of the said amount, the respondent shall release the equipment so as to enable the petitioner to take the equipment out of Gujarat.

9. It is pertinent to note that the petitioner has been directed to pay the approximate amount of tax which could have been levied so as to safeguard the interest of the State and the petitioner shall be bound to pay the amount which might be finaly ascertained when the assessment is made. Learned advocate Shri Gupta appearing for the petitioner has submitted that Shri K.D. Mehta, Manager (Indirect Taxes) of the petitioner company shall submit an undertaking to this court to the effect that upon final assessment being made, if the amount payable is in excess of the amount paid in pursuance of this order, the difference shall be paid by the company. A copy of the undertaking shall also be given to the respondent.

10. It would be open to the respondent to make necessary assessment in accordance with law in respect of the equipment in question.

11. Learned advocate Shri Gupta has submitted that a bank guarantee for Rs. 50,000/- has already been given by the petitioner in respect of the equipment in question. The said bank guarantee had been given in pursuance of an order passed by this court in Special Civil Application No. 18136 of 2003 and as the equipment is being taken out of Gujarat, the said bank guarantee may be released. As the bank guarantee had been given in pursuance of an order passed by this court in Special Civil Application No. 18136 of 2003, it would be open to the petitioner to file an application in the said petition praying for release of the said bank guarantee. As the said bank guarantee is not a subject-matter of this petition, we do not deal with the same.

12. In view of the above order, the petition stands disposed of as allowed. Rule is made absolute with no order as to costs.

(Anil R. Dave, J.)

(Akil Kureshi, J.)

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